

Law  
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## **Judges**

### **a) Describe the ways in which both inferior and superior judges are selected and appointed.**

The Courts and Legal Services Act 1990 brought in significant changes regarding appointment. Traditionally all judges were drawn from The Bar. Positions were not advertised and direct applications for positions were not acceptable. The 1990 Act has increased the pool of prospective judges by making judicial appointments open to solicitors as well as barristers, so long as they have the requisite number of years' experience of advocacy in the higher courts. Vacancies for Court and district judges are now advertised and it is possible to submit applications to The Lord Chancellor's department.

Prior to 1990 the traditional criticism levelled at judges was that they were drawn almost exclusively from the public school background shared by most practising barristers. This resulted in the judiciary being a highly partisan and conservative body that did not represent the wider public interest, but only the interests of the upper-middle class. The selection process was highly secretive, with the senior officials from The Lord Chancellor's department searching for suitable applicants by holding private conversations with serving judges and senior barristers.

The opening up of the judiciary to solicitors is a welcome development in theory as it should allow the best candidates from both branches of the legal profession to be selected. However, we have yet to see any really significant increase in the number of solicitors becoming judges, as relatively few solicitors have decided to seek the qualifications allowing them to advocate in the higher courts. Also, while solicitors come from a wider range of social backgrounds than barristers do, they are still generally middle-classed and educated in good schools. The advertising of some judicial positions can only be a good thing, but there is no evidence that the traditional process of compiling files and vetting possible candidates through secret talks with serving judges has changed.

It is still difficult for renowned academics to become judges, as they have much to offer, because of their ability to foresee the implications of any decision on the wider body of law. Academics would provide the appeal courts with a wider range of experience and values and making any judicial comments on what is 'in the public interest' more credible to the public. It seems a shame that the English legal system should be denied those benefits just because professors of law do not have a practising certificate.

**b) Outline how a judge can be dismissed from office and comment on why it is important that it should be difficult to dismiss a judge.**

Inferior judges can be dismissed by The Lord Chancellor for misbehaviour such as a criminal conviction. This helps people have faith in the legal system.

A senior judge holds office during 'good behaviour' and can only be dismissed for misbehaviour, however, since 1701 the Supreme Court Act 1981 this requires a petition through both Houses of Parliament and the Queen's assent to dismiss a judge. Misbehaviour would have to be criminal, although judges caught drink driving have not been dismissed, or be connected to the non-performance of their duties. In fact dismissal is very unlikely; instead there will be a private lecture by The Lord Chancellor or in serious cases a request for the judge's resignation. Judges in lower courts can be removed by The Lord Chancellor for misbehaviour or a fixed term contract as a recorder may not be renewed.

Recorders are the lowest rank and are part time appointment for 5 years at a time The Lord Chancellor can choose not to re-appoint without giving reasons.

It is important that it should be difficult to dismiss a judge as Independent judiciary protects us all from oppressive laws pushed through Parliament by a government with a huge majority. This protects human rights and allows laws such as the new anti-terror laws to be looked at. It also protects individuals in court from biased decisions due to judges fearing the sack. This allows judges to make decisions that no-one else wants to make such as not allowing doctors to revive a sick baby again or long term prison sentencing. All this is especially important in the English legal system as we have no true separation of powers, with The Lord Chancellor having a role in the executive, legislature and judiciary. It is thus vitally important that our judges can make decisions for the right reasons without fear of losing their job. The most insecure appointment is of course that of The Lord Chancellor, which is dependent on which party wins an election and surviving Cabinet reshuffles.